

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>		<b>GRANT NUMBER (FAIN):</b> 99257410 <b>MODIFICATION NUMBER:</b> 0 <b>PROGRAM CODE:</b> BG	<b>DATE OF AWARD</b> 09/28/2011	
			<b>TYPE OF ACTION</b> Continuation		<b>MAILING DATE</b> 10/05/2011
			<b>PAYMENT METHOD:</b> Advance		<b>ACH#</b> 20040
			<b>RECIPIENT TYPE:</b> State		
<b>RECIPIENT:</b> NYS Dept of Environmental Conservation 625 Broadway Albany, NY 12233-5010 <b>EIN:</b> 14-6013200			<b>PAYEE:</b> NYS Dept of Environmental Conservation 625 Broadway Albany, NY 12233-5010		
<b>PROJECT MANAGER</b> Mark Kolz 625 Broadway Albany, NY 12233-5010 <b>E-Mail:</b> <b>Phone:</b> 518-402-8233		<b>EPA PROJECT OFFICER</b> Martha Isaac 290 Broadway, DEPP/SPMM New York, NY 10007-1866 <b>E-Mail:</b> Isaac.Martha@epamail.epa.gov <b>Phone:</b> 212-637-3761		<b>EPA GRANT SPECIALIST</b> Cynthia Pabon Grants and Contracts Mgt Branch, OPM/GCMB <b>E-Mail:</b> pabon.cynthia@epa.gov <b>Phone:</b> 212-637-3405	
<b>PROJECT TITLE AND DESCRIPTION</b> SFY 2011-2012 Performance Partnership Grant This cooperative agreement is to provide for the operation of continuing environmental programs while giving the State of New York greater flexibility to address its highest environmental priorities, improve environmental performance, achieve administrative savings and strengthen the partnership between the State and EPA. This agreement funds statewide programs to protect and improve water quality.					
<b>BUDGET PERIOD</b> 04/01/2011 - 03/31/2012		<b>PROJECT PERIOD</b> 04/01/2011 - 03/31/2016		<b>TOTAL BUDGET PERIOD COST</b> \$22,481,900.00	
				<b>TOTAL PROJECT PERIOD COST</b> \$22,481,900.00	
<b>NOTICE OF AWARD</b>					
Based on your Application dated 08/04/2011 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$12,184,997. EPA agrees to cost-share 54.63% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$12,280,997. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.					
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>			<b>AWARD APPROVAL OFFICE</b>		
<b>ORGANIZATION / ADDRESS</b> Grants and Audit Management Branch 290 Broadway, 27th Floor New York, NY 10007-1866			<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 2 Division of Environmental Planning and Protection 290 Broadway New York, NY 10007-1866		
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>					
<b>Digital signature applied by EPA Award Official</b> Donna J. Vizian - Assistant Regional Administrator for Policy and Management				<b>DATE</b> 09/28/2011	

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FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 12,184,997	\$ 12,184,997
EPA In-Kind Amount	\$	\$ 96,000	\$ 96,000
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$ 10,200,903	\$ 10,200,903
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 22,481,900	\$ 22,481,900

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.605 - Performance Partnership Grants	Appropriations Act of 1996 (PL 104-134) Appropriations Act of 1998 (PL 105-65)	40 CFR PTS 31 & 35 SUBPT A

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1102HE0434	11	E1	02T2	202B01E	4117	-	-	5,702,000
-	1102HE0434	11	E1C	02T2	202B06EP1	4117	-	-	173,200
-	1102HE0434	11	E1C	02T2	202B06E	4117	-	-	2,673,670
-	1102HE0434	11	E1	02T2	202B06E	4117	-	-	3,636,127
									12,184,997



## **Administrative Conditions**

### **1. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES**

#### **GENERAL COMPLIANCE, 40 CFR, Part 33**

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises (MBE/WBE) in procurement under assistance agreements, contained in 40 CFR, Part 33.

#### **FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D**

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

#### **Current Fair Share Objective/Goal**

The dollar amount of this assistance agreement is \$250,000, or more; or the total dollar amount of all of the recipient's non-TAG assistance agreements from EPA in the current fiscal year is \$250,000, or more. The **New York State Department of Environmental Conservation** has negotiated the following, applicable MBE/WBE fair share objectives/goals with EPA as follows:

- for the New York Upstate Region MBE: Construction is 6%; Equipment, Supplies and Services are 8.8%.
- for the New York Upstate Region WBE: Construction is 6%; Equipment, Supplies and Services are 8.8%.
- for the New York City Region MBE: Construction is 21.5%; Equipment, Supplies and Services are 18.8%.
- for the New York City Region WBE: Construction is 13.7%; Equipment, Supplies and Services are 20.5%.

#### **Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404**

If the recipient has not yet negotiated its MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for

procurements until the proposed fair share objective/goals are submitted.

### **SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C**

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

### **MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 55.503**

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.

The reports must be submitted **annually** for the period ending September 30th for:

- 40 CFR Part 30 Recipients (Non-profits and Institutions of Higher Education); and/or
- 40 CFR Part 35 Subpart A and Subpart B Recipients.

The reports are due within 30 days of the end of the annual reporting period (October 30th). Reports should be sent to Michele Junker, the Region 2 DBE Coordinator. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at <http://www.epa.gov/osbp/grants.htm>.

### **CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302**

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

### **BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)**

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

## **2. DRUG-FREE WORKPLACE CERTIFICATION FOR ALL EPA RECIPIENTS**

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200 - 36.230. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 40 CFR 36.300.

The consequences for violating this condition are detailed under Title 40 CFR 36.510. Recipients can access the Code of Federal Regulations (CFR) Title 40 Part 36 at [http://www.access.gpo.gov/nara/cfr/waisidx\\_06/40cfr36\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html).

## **3. FINANCIAL REQUIREMENTS**

Under the Automated Standard Application for Payments (ASAP), the recipient initiates an electronic or voice activated telephone payment request which is approved or rejected based on the amount of available funds authorized by EPA in the recipient's account. Approved funds are credited to the recipient organization at the financial institution identified on the recipient's ASAP enrollment application.

The recipient agrees to the following conditions in accepting this assistance agreement:

- a. Cash draw down will be made only as actually needed for its disbursement;
- b. The recipient will provide timely reporting of cash disbursements and balances as required;
- c. The recipient will impose the same standards of timing and reporting on secondary recipients, if any.

Failure on the part of the recipient to comply with the above conditions may cause the undisbursed portions of the assistance agreement to be revoked and financing method changed to a reimbursable basis.

#### **4. FEDERAL FINANCIAL REPORTS/GRANT CLOSEOUT**

##### **A) Interim Federal Financial Reports (FFRs)**

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit an interim annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following each anniversary of the start date of the agreement. The FFR must be faxed to the Las Vegas Finance Office at 702-798-2423 or sent to the address below. A courtesy copy of the interim FFR can be submitted to the Grants and Contracts Management Branch using one of the following options: email to Region2\_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

##### **B) Final Federal Financial Report**

At the end of the project, the recipient must submit a final Federal Financial Report to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at <http://www.epa.gov/ocfo/financeservices/forms.htm> . All FFRs must be submitted to the Las Vegas Finance Center:

U.S. Environmental Protection Agency  
Las Vegas Finance Center  
PO Box 98515  
Las Vegas, NV 89119

or by Fax to: 702-798-2423.

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 31.43 if the recipient does not comply with this term and condition.

### C) Closeout

The Administrative Closeout Phase for this grant will be initiated with the submission of a "final" FFR. At that time, the recipient must submit the following forms/reports to the EPA Region 2 Grants and Contracts Management Branch, if applicable:

- Federally Owned Property Report
- An Inventory of all Property Acquired with federal funds
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)

Additionally, the recipient's Final Request for Payment should be submitted to the LVFC.

## **5. HOTEL-MOTEL FIRE SAFETY**

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

## **6. LOBBYING AND LITIGATION - ALL RECIPIENTS**

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

### RESTRICTIONS ON LOBBYING

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on*



*Lobbying* . The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

## **7. MANAGEMENT FEES**

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

## **8. EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE**

If a no cost time extension is necessary to extend the period of availability of funds (budget period), the recipient must submit a written request, including a justification as to why additional time is needed and an estimated date of completion to the EPA prior to the budget/project period expiration dates. The extension request should be submitted to the EPA, Grants and Contracts Management Branch using one of the following options: email to [Region2\\_GrantApplicationBox@epa.gov](mailto:Region2_GrantApplicationBox@epa.gov), fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. An interim FFR (SF-425) covering all expenditures and obligations to date, must also be faxed to the Las Vegas Finance Office at 702-798-2423 or sent to the address below. To expedite processing of your request, please submit a courtesy copy of the interim FFR to the Grants and Contracts Management Branch along with your extension request. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

U.S. Environmental Protection Agency  
Las Vegas Finance Center  
PO Box 98515  
Las Vegas, NV 89119

or by Fax to: 702-798-2423

## **9. RECYCLING AND WASTE PREVENTION**

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007) and or 40 CFR 30.16, the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

#### **STATE AGENCIES AND POLITICAL SUBDIVISIONS:**

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

### **10. REIMBURSEMENT LIMITATION**

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

### **11. ADVANCE METHOD OF PAYMENT**

In accordance with EPA regulations, the recipient is authorized to receive advance payments under this agreement, provided that the recipient takes action to minimize the time elapsing between the transfer of funds from EPA and the disbursement of those funds. The recipient shall request Federal payments by completing the EPA Payment Requests Form (EPA Form 190-F-04-001) and faxing it to the Las Vegas Finance Center at 702-798-2423. This form can be found at [www.epa.gov/ogd/forms/forms.htm](http://www.epa.gov/ogd/forms/forms.htm).

### **12. SINGLE AUDITS**

In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor, if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit the SF-SAC and a Single Audit Report Package. **The recipient MUST** submit the SF-SAC and a Single Audit Report

Package, using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site:

<http://harvester.census.gov/fac/>

### **13. SUBAWARD POLICY**

a. The recipient agrees to:

1. Establish all subaward agreements in writing;
2. Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
3. Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
4. Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
5. Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
6. Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
7. Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
8. Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at

<http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.

c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

### **14. SUSPENSION AND DEBARMENT**

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Recipient is responsible for ensuring that any lower tier

covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled “Covered Transactions,” includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at [www.epis.gov](http://www.epis.gov). This term and condition supersedes EPA Form 5700-49, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters.”

## 15. TRAFFICKING IN PERSONS

### ***a. Provisions applicable to a recipient that is a private entity***

1. You as the recipient, your employees, subrecipients under this award, and subrecipients’ employees may not—
  - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
  - ii. Procure a commercial sex act during the period of time that the award is in effect; or
  - iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
  - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
  - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
    - A. Associated with performance under this award; or
    - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our Agency at 2 CFR 1532.

### ***b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—***

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
  - i. Associated with performance under this award; or
  - ii. Imputed to the subrecipient using the standards and due process for

imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR 1532

**c. Provisions applicable to any recipient**

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
  - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
  - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

**d. Definitions. For purposes of this award term:**

1. "Employee" means either:
  - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
  - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. "Private entity":
  - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
  - ii. Includes:
    - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
    - B. A for-profit organization.
4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

## **16. DUNS AND CCR REQUIREMENTS**

Central Contractor Registration and Universal Identifier Requirements.

A. Requirement for Central Contractor Registration (CCR). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must

maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see

Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

## 17. SUBAWARD REPORTING AND COMPENSATION

### I. Reporting Subawards and Executive Compensation.

#### a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).
2. Where and when to report.
  - i. You must report each obligating action described in paragraph a.1. of this award term to [www.fsrs.gov](http://www.fsrs.gov).
  - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. What to report. You must report the information about each obligating action that the submission instructions posted at [www.fsrs.gov](http://www.fsrs.gov) specify.

#### b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if –
  - i. the total Federal funding authorized to date under this award is \$25,000 or more;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at [www.ccr.gov](http://www.ccr.gov).

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if --

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and



ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

1. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any subrecipient

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization;
- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. *Salary and bonus* .
- ii. *Awards of stock, stock options, and stock appreciation rights* . Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. *Earnings for services under non-equity incentive plans* . This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. *Change in pension value*. This is the change in present value of defined benefit and actuarial pension plans.
- v. *Above-market earnings on deferred compensation which is not tax-qualified* .
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

## 18. ACORN

Congress has prohibited EPA from using its FY 2011 appropriations to provide funds to the Association of Community Organizations for Reform Now (ACORN) or any of its subsidiaries. None of the funds provided under this agreement may be

used for subawards/subgrants or contracts to ACORN or its subsidiaries. Recipients should direct any questions about this prohibition to their EPA Grants Management Office.

## **19. INDIRECT COSTS**

If the recipient's negotiated rate does not extend through the life of the Assistance Agreement, additional indirect cost rate proposal(s) must be submitted until the full life of the Assistance Agreement is covered by negotiated indirect cost rates. The recipient **will not charge nor claim for reimbursement any indirect costs that are not covered by a negotiated indirect cost rate.** The recipient must submit a copy(ies) of the Indirect Cost Negotiation Agreement(s) to the EPA Regional Office in order to be eligible to claim indirect costs against this Assistance Agreement.

### **Programmatic Conditions**

#### **1. PROGRESS REPORTS & FINAL PROJECT REPORT**

For State and Tribal program recipients under 40 C.F.R. Part 35 Subparts A and B, interim and final performance reports submitted by recipients under 40 C.F.R. §§ 35.115 and 35.515 (Evaluation of Performance) must adequately address progress in achieving agreed-upon outputs and outcomes. This includes ensuring that performance reports provide satisfactory explanation of why outcomes or outputs were not achieved. New York State Department of Environmental Conservation (NYSDEC) will comply with the requirements of 40 CFR 31.40 as set forth in the Memorandum of Understanding between the NYSDEC/Division of Water (DOW) and EPA regarding the Grants Review and Oversight Group (GROG) report. NYSDEC will provide to EPA Project Officer a semi-annual GROG progress report by October 31, 2011 and a final GROG progress report by April 30, 2012.

#### **2. QUALITY ASSURANCE**

##### **Quality Management Plan (QMP)**

The NYSDEC Division of Water Quality Assurance Management Plan was approved for the period April 1, 2010 through March 31, 2012.

#### **3. 319h NON-POINT SOURCE PROGRAM**

In accordance with the provisions of the Clean Water Act Section 319(h)(8) and the "Nonpoint Source Program and Grant Guidelines for States and Territories" as published in the *Federal Register*, EPA Region 2 has determined that NYSDEC has made satisfactory progress in meeting the schedule of milestones as delineated in

the State's Nonpoint Management Program and the State's annual workplan. This determination was based on the review of the State's Nonpoint Source Reports, data input into the Grants Reporting and Tracking System (GRTS), status reports on annual work plans and additional documents submitted in regards to the Section 319 Nonpoint Source Program. Award of future nonpoint source management funds is contingent upon the availability of funds and continued satisfactory progress in the schedule of established milestones.

#### MATCHING SHARE

This Performance Partnership Grant (PPG) award and the resulting federal funding share, 54.63% as shown under "Notice of Award" above, is based on estimated costs requested in the Recipient's application. While actual total expenditures may differ from those estimates, the Recipient shall not provide less than the sum of the minimum non-federal cost share required under each of the environmental programs combined in this PPG. In accordance with the CWA 319(h) program statutory requirements, the Recipient shall provide no less than a 40% non-federal cost share and shall maintain its aggregate expenditures from all other sources for programs for controlling nonpoint pollution and improving the quality of the State Recipient's waters at or above the average level of such expenditures in Fiscal Years 1985 and 1986. In accordance with the CWA 106 program statutory requirements, the State Recipient must expend annually for recurrent CWA 106 program expenditures an amount of non-federal funds at least equal to expenditures during the fiscal year ending June 30, 1971. Under this PPG, the Recipient's non-federal cost share of final program expenditures must equal or exceed \$8,340,570, which represents the sum of (1) the CWA 319(h) required non-federal cost share, based on the total amount of federal funds awarded, plus (2) the CWA 106 required non-federal cost share. EPA's participation under this PPG shall not exceed the total amount of federal funds awarded.

#### **4. EQUIPMENT CONDITION**

For any items costing \$5,000 or more, a justification as to the need for purchasing the equipment is to be provided to the EPA project officer within 30 days of receipt of award. The EPA project officer must provide written approval for the planned purchase before such costs can properly be charged to the grant.

#### **5. COMPUTER EQUIPMENT PURCHASES**

The recipient shall obtain approval by the EPA, Region 2 Information System Branch, prior to the purchase of computer equipment, computer services, or digital data with a unit price of \$5,000 or more.

#### **6. PRE-AWARD COSTS**

In accordance with the 40 CFR Section 35.113, Reimbursement for pre-award

costs, EPA may reimburse recipients for pre-award costs incurred from the beginning of the funding period established in the grant agreement, April 1, 2011, if such costs had been allowed if incurred after the award and the recipients submitted complete grant applications before the beginning of the budget period. Such costs must be identified in the grant application EPA approves. The applicant incurs pre-award costs at its own risk. EPA is under no obligation to reimburse such costs unless they are included in an approved award.

## **7. EPA INVOLVEMENT**

EPA will have significant involvement with the recipient in the form of programmatic oversight, and review and comment of all agreement activities and products, as identified under Components #1 through #8. in the workplan.

## **8. FOOD AND REFRESHMENTS**

Unless the event(s) are specified in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops, and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

1. An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
2. A description of the purpose, agenda, location, length and timing for the event.
3. An estimated number of participants in the event and a description of their roles.

Recipients may address questions about whether costs for light refreshments, and meals for events are allowable to the recipient's EPA Project Officer. However, the Agency Award Official or Grant Management Officer will make final determinations on allowability.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.11)

## **9. SUFFICIENT PROGRESS**

EPA may terminate the assistance agreement for failure of the recipient to make sufficient progress so as to reasonably ensure completion of the project within the project period, including any extensions. EPA will measure sufficient progress by

examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period, and/or the availability of funds necessary to complete the project.